

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)
)
v.) DEFENSE INTERROGATORIES
) FOR GOVERNMENT COUNSEL
MANNING, Bradley E., PFC)
U.S. Army, xxx-xx-(b) (6))
Headquarters and Headquarters Company, U.S.)
Army Garrison, Joint Base Myer-Henderson Hall,) DATED: 26 October 2012
Fort Myer, VA 22211)

Pursuant to Rule for Courts-Martial (R.C.M.) 702(g)(2), the Defense submits the following questions to be asked of each of the trial counsel. The Defense requests that the responses to the written interrogatories be provided to the Court and Defense no later than 16 November 2012.

Original Classification Authorities: Charged Documents

Did you believe a classification review of charged documents was mandatory to have prior to an Article 32 hearing? If yes, why?

On 21 April 2011, you “researched conducting Article 32 investigation without classification reviews.” On April 28 2011, you “Finalized research on classification reviews for Article 32”. Why did your research make you conclude that the classification review was necessary?

How did you use each OCA classification review at the Article 32 hearing? Please be specific.

Were there other ways that you could have accomplished the same thing without the classification review?

When did you first communicate with each of the OCAs about conducting a classification review in this case? Please list each OCA and date separately.

When did you first request that each OCA complete a classification review? Please list each OCA and date separately.

How did you communicate with the OCA when you first requested that the OCA complete a classification review? If a written communication, please provide the documentation.

What, if anything, did you communicate about the timing of the classification review? If a written communication, please provide the documentation.

What is your understanding of when each OCA began the classification review process? Please list each OCA and date separately.

How many documents did you ask each OCA to review?

On 18 March 2011, you sent memoranda to each of the OCAs and requested that they “finalize” their reviews. Does this mean that the OCAs had already been asked to complete the reviews and should have been in the process of “finalizing” the reviews? Please explain this statement.

If 18 March 2011 was the first time you requested the OCAs to complete a classification review, why did you use the word “finalize” in each of the memoranda?

What is your understanding of what each of the OCAs had done in the ten months prior to you submitting the 18 March 2011 memorandum?

If 18 March 2011 was the first time you requested the OCAs to complete a classification review, why did you wait almost a year before submitting the request?

Your chronology shows that you had draft memoranda for the OCAs in August 2010. Why did you wait until 7 months later to submit these requests?

If 18 March 2011 was the first time you requested the OCAs to complete a classification review, why was the Convening Authority already excluding time based on “OCA review of classified evidence”?

For the 18 March 2011 memoranda, you included a suspense of 31 March 2011 for each OCA?

How did you select the 31 March 2011 suspense date?

Why was the suspense date so short?

Did they meet this suspense date?

If not (and it appears not), did you follow-up and ask why they did not meet the suspense date? What was the answer you were given. Please provide documentation.

In the OCA requests, you specifically reference the accused’s right to a speedy trial and indicate that if the OCA does not complete his task in a timely manner, this could severely hinder the prosecution. What did you mean by this?

In a 6 October 2011 memorandum to Central Command, you ask that they review some additional documents and state that that “*any* delay by your command to comply with this firm deadline [31 October 2011] may *severely* jeopardize the prosecution.” What did you mean by this?

Did Central Command meet this suspense date for the additional documents?

You sent several further requests to the OCAs asking them to complete a classification review. Please provide all the dates that you sent further requests.

Other than the date at the top of the memo and the suspense date, were these requests any different from the original 18 March request? If so, how?

If not, why did you keep sending duplicative requests?

Each of the further memoranda had short suspense dates that the OCAs did not meet. Did you follow-up with the OCAs when the suspense dates had passed?

If so, what did the communication entail? Please provide documentation.

Did you ever communicate with the OCA personally? (i.e. not the OCAs' delegates)

Did you ask for updates on where the OCAs were in the process of completing the classification review? If so, how and when did you ask? If in written form (e.g. email, letter, memo), please provide documentation.

Did you ever ask you how much longer the process would take? If so, how and when did you ask? If in written form (e.g. email, letter, memo), please provide documentation.

Did you ever ask you what specifically was taking so long? If so, how and when did you ask? If in written form (e.g. email, letter, memo), please provide documentation.

Did you ask how many people were working on the classification review? If so, how and when did you ask? If in written form (e.g. email, letter, memo), please provide documentation.

Did you ask how much time you were devoting to the classification review process? If so, how and when did you ask? If in written form (e.g. email, letter, memo), please provide documentation.

List any other communications you had with respect to the classification reviews of the charged documents with each of the OCAs and/or his delegates. Please list agency, date, and substance of communication.

When did you receive each completed classification review from each OCA? When did you disclose these reviews to the Defense? List each OCA and date separately, along with when you received the review and when you disclosed it to the Defense.

On 3 May 2011, there is a time entry that reads "Phone call with CENTCOM who asked for new classification review discs because the original copies did not work in CENTCOM classified computers." Does this refer to the 18 May 2011 request for classification review? If not, what does it refer to? When were the disks provided to CENTCOM?

On 16 March 2011, there is the following time entry, "16-Mar-11 Wed Email with CENTCOM-prosecution received unclass class review Apache video." When did you request that CENTCOM review the Apache video? When did you disclose this review to the Defense?

In light of the answer above, please explain the following time entry, "18-Oct-10 Mon Email with CENTCOM-prosecution received original classification review for Apache video."

Did you provide any of the OCAs with sample declarations to use? Please list which ones.

If not, please explain the following statement in your 30 November 2010 classification review request for the Deputy Chief of Staff for Intelligence (Pentagon), "The prosecution team requests each OCA or their subject matter expert on classified information use the enclosed sample declaration to answer the above questions."

The suspense date on this memorandum was 1 January 2010 [2011?]. Did the Deputy Chief of Staff for Intelligence (Pentagon) meet this suspense date? If not, when did they provide the classification review? When was that review provided to the Defense?

Computer Forensics and Original Classification Authorities

Unclassified CID Report

When was the unclassified CID/CCIU file completed, or substantially completed?

Did you require authority to disclose the unclassified CID/CCIU file to the Defense? If yes, explain.

If yes, explain when you got each of the relevant approvals?

When was the unclassified CID/CCIU file produced to the Defense?

With the exception of a couple of documents in the unclassified CID file, all the reports were prepared in December 2010 or earlier. Why were these documents not disclosed until 25 July 2011?

Classified CID/CCIU Report

When was the classified CID/CCIU file completed, or substantially completed?

On 12 March 2011, your Chronology indicates that you “emailed [] CCIU to request CCIU to review all classified information in the case file to determine which OCAs are in the file.” What sort of report did CCIU have as of 12 March 2011?

On 7 April 2011, your Chronology indicates “Thu Meeting-review CCIU case file at CCIU”. What sort of report did CCIU have as of 7 April 2011?

What are the dates on each of the forensic reports compiled by CID/CCIU?

How many of the forensic reports were classified and how many were unclassified?

Which OCAs needed to review the classified CID/CCIU file?

When did you ask each OCA to review the classified CID/CCIU file?

What were they asked to do?

When did each OCA begin the review the classified CID/CCIU file?

When did each OCA complete the review of the classified CID/CCIU file?

When did each OCA consent to disclosure of the classified CID/CCIU file to the Defense?

When was the classified CID/CCIU file disclosed to the Defense?

Why do you believe that you needed the classified CID/CCIU file prior to proceeding with the Article 32 hearing? Explain why?

Were classified CID/CCIU files provided to the Defense after the Article 32 hearing?

How many witnesses at the Article 32 hearing discussed classified forensic evidence, requiring a closed session?

Requests for Excludable Delay

Did you tell the Convening Authority that it was necessary (i.e. a legal prerequisite) to have a classification review prior to an Article 32 hearing?

Did you use the same document template every time you asked for excludable delay, or did you re-type a whole new memorandum?

How did you communicate with the Convening Authority for each of the excludable delay memoranda? List each excludable delay memorandum and indicate whether the communication was in person, over the phone, by email, or in some other way.

If the communication was by email, please provide the supporting emails (both Government and Convening Authority).

If the communication was by phone, please indicate how long you spoke with the Convening Authority on each occasion.

If the communication was in person, please indicate how long you spoke with the Convening Authority on each occasion.

Did the Convening Authority sign the memoranda at these meetings, or did he just take them from you?

Did you draft the memoranda for the Convening Authority to sign?

If yes, did he ever make any changes to what you had drafted?

Did the Convening Authority have digital versions of the documents you were presenting to him so he could have made changes?

Did the Convening Authority ever ask:

What the classification review entailed? If yes, explain what you told him.

What the approval for classified information entailed? If yes, explain what you told him.

What the Defense request for “substitutions” meant? If yes, explain what you told him.

What R.C.M. 707 and Article 10 entailed? If yes, explain what you told him.

What was taking so long with the classification reviews of charged documents? If yes, explain what you told him.

You to go back to the OCAs to expedite the process? If yes, explain what you told him.

Whether he could help expedite the OCA approval process? If yes, explain what you told him.

How many people from each of the OCAs was working on the classification review? If yes, explain what you told him.

Why it was necessary to have a classification review prior to the Article 32? If yes, explain what you told him.

How many charged documents each of the OCAs was reviewing? If yes, explain what you told him.

How long the final work product of the OCAs for the classification reviews of the charged documents should be? If yes, explain what you told him.

How long the classification reviews that were coming in in the Fall of 2011 were? If yes, explain what you told him.

To see a classification review in this case? If yes, explain what you told him.

Whether the Defense was entitled to the classification review in the absence of a specific Defense request? If yes, explain what you told him.

How long it should take and did take to get all relevant individuals security clearances? If yes, explain what you told him.

Whether you could have proceeded with the Article 32 in the absence of the OCA classification reviews? If yes, explain what you told him.

For a more detailed accounting of what the Government was doing? If yes, explain what you told him.

Once you began making Government requests for delay, what you had done in the one year prior?

Other than his 21 January 2010 memorandum to Col. Choike, did COL Coffman express a concern over PFC Manning's confinement conditions at Quantico during the time he signed the excludable delay memoranda? Explain.

Did COL Coffman ever express concern about how many raw days had elapsed since PFC Manning was placed in pretrial confinement?

If COL Coffman had ordered OPLAN Bravo to be executed as of November 1, 2011, could it have been executed in 30 days?

R.C.M. 706 Board

Why wasn't the 706 board ordered to resume its work when the Preliminary Classification Review (PCR) was completed on 13 December 2010?

What did the Government do between 3 August 2010, when the Convening Authority initially ordered the board, and 13 December 2010, when the PCR was completed, to identify potential board members?

When did the Government know the identity of each of the board members?

Did each board member have the appropriate security clearance once they were selected to serve on the RCM 706 board?

If any member did not have the requisite clearance, what did the Government need to do to obtain the appropriate security clearance for the member? Please explain for each member that did not have the requisite security clearance.

How long did it take to complete the process of getting every member the requisite security clearances?

Your chronology states that on 31 January 2011 “ALL RCM 706 BOARD MEMBERS GRANTED SECURITY CLEARANCE (TS-SCI) AND READ-ON (SCI)” – why did it take until 31 January 2011 to complete this process? Why wasn’t this process completed earlier?

On 26 August 2010, the Defense notified the Government that any board members would need a TS-SCI clearance, what didn’t identify the board members at that point and ensure each member had the requisite security clearance?

What steps did the Government take to locate a SCIF for the board members to meet with PFC Manning?

When did the Government begin the process of locating a SCIF?

According to the trial your chronology, you conduct a “recon” of the INSCOM SCIF on 25 February 2011. Why did you wait until 25 February 2011 to conduct a recon of the INSCOM SCIF?

Was the 706 board conducting any work between 3 February and 25 February 2011?

On 1 March 2011, your chronology indicates that you scheduled a tour of the INSCOM SCIF for the 706 board? Why did the 706 board need to tour the INSCOM SCIF?

According to your chronology, you notified the Defense on 5 March 2011, that the INSCOM SCIF was available any Saturday after 5 March. Why did it take so long to secure the INSCOM SCIF?

In the email to the Defense, you stated that “we received authorization to use the SCIF on Saturdays to minimize the accused's exposure to third parties.” Why did you need to limit the use of the SCIF to Saturdays only?

Were you ever informed that Dr. Sweda wanted to meet with PFC Manning in a SCIF on a week day instead of weekend?

Department of State

Damage Assessment

When did you first learn that the Department of State was working on a damage assessment?

Why did you use the expression “The Department of State has not completed a damage assessment” in your motion, in oral argument, and in response to the Court’s questions?

Did the Department of State require you to use that expression? If so, please provide documentation.

Prior to the 15 March 2012 motions argument, you had several communications with the Department of State regarding the “draft” damage assessment? What did these communications entail?

Your Chronology in early March 2012 refers to discussions with the Department of State regarding the “draft” damage assessment. Why did you not tell the Court that the Department of State had a draft damage assessment when you yourself were referring to it as a “draft” damage assessment in your timesheets?

Why did you refuse to acknowledge that the Department of State had some form of damage assessment? (you referred to it as “alleged” and refused to confirm whether it existed)

Did the Department of State require you to refer to it as “alleged”? If so, please provide documentation.

In light of your knowledge and discussions about the “draft” damage assessment, do you believe the expression you used “The Department of State has not completed a damage assessment” gave a false impression?

You indicated at oral argument that you could not confirm whether or not the Department of State draft damage assessment contained *Brady* information because that information was classified. Please provide supporting documentation.

Is the Department of State’s position that the document is still a “draft”? (i.e. that it is not completed).

If so, has the document been changed since last reviewed by the Court and Defense?

What is the date on the Department of State damage assessment?

When did you first ask to review the Department of State damage assessment?

When did the Department of State authorize you to view the damage assessment?

When did you view the Department of State damage assessment?

When did the Department of State authorize the Defense to view the damage assessment?

When was the damage assessment made available to the Defense?

Did the Department of State resist providing the damage assessment to the Defense?

Did the Department of State insist that the damage assessment was a draft and not discoverable?

Did the Department of State request or advise that you submit a motion for reconsideration of the Court's ruling with respect to the discoverability of the damage assessment?

Brady Discovery

When did you first make a request for *Brady* material from the Department of State?

Why did you not contact the Department of State earlier to make the request for *Brady* material?

Did you use the term *Brady* and/or R.C.M. 701(a)(6) in your request?

Did you explain in this request that you were looking for mitigating evidence, both for merits and for sentencing?

How many manpower hours in total did it take the Department of State to gather responsive documents? (this relates solely to the *Brady* discovery)

When did the Department of State provide you with *Brady* material?

Between the date that you first made a request for *Brady* material from the Department of State and the time the Department of State provided you with *Brady* material, did you contact the Department of State about expediting the process? If so, when? What was said? Please provide documentation.

When did you review the *Brady* material provided by the Department of State? Please provide dates.

How many documents did the Department of State provide you with?

How many hours collectively did it take you to review the *Brady* material?

When did you disclose the *Brady* material from the Department of State to the Defense?

When you filed your June motion resisting production of Department of State documents on the grounds that they were likely cumulative, had you reviewed all the Department of State documents?

If not, what were you basing your litigation position on?

Did the Department of State advise or suggest that you adopt this litigation position?

Prior to June 2012, did the Department of State provide you with evidence for your case in chief? Please list categories of evidence that the Department of State provided to you prior to June 2012.

Was the Department of State involved in selecting the charged documents?

Was the Department of State involved in providing valuation evidence?

Touhy Request

When did the Defense submit to a *Touhy* request to you?

When did you submit the *Touhy* request to the Department of State?

When did the Department of State receive the *Touhy* request?

If there is a time lag between the date the Defense submitted the *Touhy* request and the date the Department of State received the *Touhy* request, please explain.

Since the Defense submitted the *Touhy* request, did you ever contact the Department of State about expediting the process? If so, please provide dates, details and documentation.

Why was the Defense's *Touhy* request not processed after being told you would ensure timely and meaningful access to Department of State witnesses?

DSS

When did DSS complete its investigation?

When did you first request to view DSS files?

When did you first view the DSS files?

How many total manpower hours did it take you to review the DSS files?

Did you require approval to disclose those files to the Defense?

When did you request such approval?

When did DSS consent to disclosure of the files?

When were all the DSS files produced to the Defense?

Federal Bureau of Investigation

Investigative File

When did the FBI start its investigation of the accused?

When did the FBI complete its investigation of the accused?

According to your Response, on 19 April 2011, you requested approval to disclose to the defense the FBI case file and its sub-files. You also made two other duplicative requests on 28 July 2011 and 15 August 2011. Why did you have to make three requests for the same thing?

When did the FBI consent to disclosure of the FBI file to the Defense? Please provide documentation to this effect.

If you were requesting on 19 April 2011 approval to disclose the FBI file to the defense, why was it that you did not finish reviewing the file until 1 February 2012?

When was the first time that you saw the FBI file?

When were you given a copy of the FBI file?

How many hours collectively did it take the prosecution to review the FBI file?

When did you review the FBI file? Please give specific dates.

When did you disclose the entirety of the discoverable FBI file to the Defense?

You say that on 7 February 2012, you “began extensive negotiations with DOJ and the FBI to disclose all requested information to the defense.” You then state, “The FBI would not approve disclosure to the defense, absent a military judge to issue a Protective Order.” Is your position that, as of 7 February 2012, the FBI refused to consent to disclosure of the FBI investigative file to the Defense because the Military Judge had not signed a protective order?

Is there any documentation from the FBI, other than Unclassified Email 0451, that reflects the FBI’s position that it would not consent to disclosure of the investigative file absent a protective order signed by a Military Judge?

How can the Unclassified Email 0451 be read to say that the FBI’s position is that the FBI would not consent to disclosure of the investigative file absent a protective order signed by a Military Judge?

How can an email from 5 May 2011, written nine months *prior* to you reviewing the FBI file be read as saying that the FBI will not consent to disclosure of the investigative file absent a protective order signed by a Military Judge?

Why is Unclassified Email 0451 entitled “CID Case File and Update” if it deals with the FBI investigative file?

Is Unclassified Email 0465 part of the same email chain since it has the same subject line?

In Unclassified Email 0465, you state, “Joe and Angel are going to coordinate with [redacted] to finish scrubbing the FBI files, and then we will put together our ‘wish list’ of the documents we would like authorization to use and/or turn over in discovery. Ideally, in the coming weeks, we will have a comprehensive list of all documents in all investigative files (CID, FBI, and DSS), that we would like to seek approval for use during discovery and will present the list to all for input and potential for follow-on action (e.g. requesting a modification of sealing orders).” How can the FBI have refused to consent to disclosure of documents in Unclassified Email 0451 when you had not yet prepared your ‘wish list’?

Why would you tell the FBI you would put together a “comprehensive list of all documents in all investigative files (CID, FBI, and DSS), that we would like to seek approval for use during discovery and will present the list to all for input and potential for follow-on action” if the FBI

had already told you that it would not consent to disclosure of the FBI file absent a Military Judge's order?

If the FBI had indicated on 5 May 2011 that it would not disclose the files to the Defense absent a Military Judge's order, why did you request on 28 July 2011 and 15 August 2011 that the FBI consent to disclosure of the files to the Defense?

If the FBI's position was that it would not disclose documents absent a military judge's protective order, was it aware that a protective order was already in place? Why was that protective order not sufficient for the FBI?

FBI Impact Statement

When did you know that the FBI was working on an impact statement/damage assessment (hereafter "impact statement")?

When did the FBI start working on the impact statement?

When did the FBI complete the impact statement?

When did you first request to view the impact statement?

When did the FBI grant approval for you to view the impact statement?

When did you view the impact statement?

Did the FBI request for you not to disclose the existence of the impact statement to the Defense?

Why did you wait until 31 May 2012 to alert the Court and the Defense to the impact statement?

Why did you use the phraseology that you "discovered" that the FBI had conducted an impact statement when you had known about the impact statement for some time?

Why did you provide "notice" to the Court of the impact statement in the middle of a Response motion, and not as a separate motion?

Why did you not disclose the existence of the impact statement to the Defense when the Defense made the following discovery request on 20 January 2012: "Does the Government possess any report, damage assessment, or recommendation as a result of any joint investigation with the Federal Bureau of Investigation (FBI) or any other governmental agency concerning the alleged leaks in this case?"

When was the impact statement (with substitutions) provided to the Defense?

Brady Discovery

When did you first make a request for *Brady* material from the FBI?

Why did you not contact the FBI earlier to make the request for *Brady* material?

Did you use the term *Brady* and/or R.C.M. 701(a)(6) in your request?

Did you explain in this request that you were looking for mitigating evidence, both for merits and for sentencing?

When did the FBI provide you with *Brady* material?

How many documents did the FBI provide you with?

Between the date that you first made a request for *Brady* material from the FBI and the time the FBI provided you with *Brady* material, did you contact the FBI about expediting the process? If so, when? What was said? Please provide documentation.

When did you review the *Brady* material provided by the FBI? Please provide dates.

How many hours collectively did it take you to review the *Brady* material?

When did you disclose the *Brady* material from the FBI to the Defense?

ONCIX

How many agencies did ONCIX include in its compiling its damage assessment? [The Defense has been calling these the 63 agencies, but it now appears to be 57 agencies].

What is the earliest date on these individual damage assessments? What is the latest date on these damage assessments?

How many of these damage assessments are dated after April 2011?

When did ONCIX begin working on the damage assessment?

When did you first learn that ONCIX was charged with, or in the process of, working on a damage assessment?

According to your Chronology and/or Response, on 22 September 2011, the Government was informed that ONCIX had a damage assessment that was “in working draft form” and on 6 March 2012, ONCIX informed the Government that its “draft damage assessment is currently a draft.” In light of these two statements that ONCIX had a draft damage assessment, why did you tell the Court that you “were unaware [when the Court asked its questions] that [ONCIX] had any other documentation created *that would even qualify as a draft.*”?

In light of the above statements, why did you further tell the Court twice that you had “no clue” that ONCIX had a draft damage assessment?

When you responded to the Court’s questions by stating “ONCIX has not produced any interim or final damage assessment in this matter,” why didn’t you include the rest of ONCIX’s statement?

Why did you not inform the Court that ONCIX was in the process of working on a damage assessment (irrespective of whether it was a draft or something else)?

How did ONCIX provide the following statement to you?

To date, ONCIX has not produced any interim or final damage assessment in this matter. ONCIX is tasked with preparing a damage assessment. However, that draft damage assessment is currently a draft and is incomplete and continues to change as information is compiled and analyzed. Damage assessments can take months or even years to complete, and given the sheer volume of disclosures in this case we do not know when a draft product will be ready for coordination, much less dissemination.

If in writing, please provide the entire email/memorandum/letter.

If in writing, why did you tell the Court that ONCIX provided this statement to you orally and that you wrote it down verbatim?

Did ONCIX request and/or advise that you not disclose the existence of the damage assessment to the Defense or the Court?

Did ONCIX require you to use the statement “To date, ONCIX has not produced any interim or final damage assessment in this matter” in your communication with the Court? If so, please provide documentation.

If ONCIX required you to use the statement “To date, ONCIX has not produced any interim or final damage assessment in this matter” in your communication with the Court, did ONCIX prevent you from using the remainder of the statement (i.e. “ONCIX is tasked with preparing a damage assessment. However, that draft damage assessment is currently a draft ...)?

Do you believe that the expression “To date, ONCIX has not produced any interim or final damage assessment in this matter” conveys a false impression?

After the Court asked its questions on 21 March 2012, did you contact ONCIX about its damage assessment prior to responding on 22 March 2012?

If yes, what did you ask? What did ONCIX say? Please provide documentation.

If yes, why was it necessary to reach out to ONCIX again since they had already given you its response on 6 March 2012?

If yes, why aren’t these entries on your Chronology?

If no, why did you tell the Court at oral argument that you had reached out to ONCIX again prior to responding to the Court’s questions?

You claim that it was after the Court’s Ruling on 11 May 2012 regarding the discoverability of the Department of State damage assessment that you felt compelled to go back to ONCIX to get ONCIX to reassess its position as to whether it had a draft. Why was this necessary in light of ONCIX’s repeated admissions that it had a “working draft” or a “draft”?

Did you and ONCIX have discussions about the discoverability of draft documents?

If yes, explain what these communications entailed and provide documentation.

Is the version of the damage assessment that the Government disclosed to the Defense still the latest version of the damage assessment?

Is the version of the damage assessment that the Government disclosed to the Defense the final version of the damage assessment?

If not, when does ONCIX plan on finalizing the damage assessment?

When did you first request authority to view the ONCIX damage assessment?

According to your Chronology, it appears that you “requested authority to review the ONCIX damage assessment” in February 2011. If you requested authority to view the damage assessment in February 2011, why is it that *over one year later*, you claim that you did not know that ONCIX had a draft damage assessment?

Was it your belief that ONCIX simply did nothing in that one year period?

When did you actually view the ONCIX damage assessment?

Why did you not view the ONCIX damage assessment earlier?

The ONCIX damage assessment is not dated. Do you know the date of the damage assessment? If so, what is the date of the ONCIX damage assessment? [If this information is classified, please provide an explanation and documentation to this effect].

Does the Government consider the length of the ONCIX damage assessment to be classified? If yes, please provide documentation. If not, please inform the Court of the length of the ONCIX damage assessment.

How many total hours did it take you to review the ONCIX damage assessment?

When did you review the ONCIX damage assessment?

When did you produce the ONCIX damage assessment to the Defense?

Brady Discovery

When did you first make a request for *Brady* material from ONCIX?

Why did you not contact ONCIX earlier to make the request for *Brady* material?

Did you use the term *Brady* and/or R.C.M. 701(a)(6) in your request?

Did you explain in this request that you were looking for mitigating evidence, both for merits and for sentencing?

When did ONCIX provide you with *Brady* material?

How many documents did ONCIX provide you with?

Between the date that you first made a request for *Brady* material from ONCIX and the time ONCIX provided you with *Brady* material, did you contact ONCIX about expediting the process? If so, when? What was said? Please provide documentation.

When did you review the *Brady* material provided by ONCIX? Please provide dates.

How many hours collectively did it take you to review the *Brady* material?

When did you disclose the *Brady* material from ONCIX to the Defense?

63 Agencies

When did you first learn that part of the ONCIX damage assessment involved reaching out and getting individual damage assessments from various agencies (hereinafter “the 63 agencies” – even though the Government now indicates that there are only 57 agencies)?

When did you first request access from ONCIX to these individual damage assessments?

What did ONCIX tell you? Please provide documentation.

From your Response, you state that on 18 February 2011, ONCIX informed you that it would not be able to turn over the individual damage assessments it had received from the agencies it had contacted and that “approval from the other government organizations was necessary, since many of the individual assessments were classified.” Why did you not go to the other agencies directly at this point?

When did you first request contact information for the individual agencies from ONCIX?

What did you do to get the individual damage assessments from 18 February 2011 to 11 October 2011?

You state in your Response that you didn’t receive the contact information for the various agencies until 14 October 2011, but that you attempted to contact the different organizations on 11 October 2011. How is this possible?

When did you first receive the agencies’ contact information?

Who did you receive it from?

How did you receive it?

On what date did you have a list of all the agencies that prepared a damage assessment for ONCIX?

Was it possible to get phone numbers or addresses for these agencies absent ONCIX providing them to you?

Did you reach out to ONCIX between 18 February 2011 and 11 October 2011 to request phone numbers/contact information?

If yes, what did ONCIX say?

How many times did you request contact information from ONCIX? Please provide dates.

If you had contact information for the individual agencies prior to 11 October 2011, why did you not contact these agencies earlier?

Which agencies did you contact on or about 11 October 2011?

What did you ask them for?

Did they provide it?

When?

Who specifically contacted these agencies? Please provide names.

According to your Response, on 18 February 2011, “the prosecution sought assistance from ONCIX to retrieve the individual damage assessments of those government organizations from which ONCIX requested input. ONCIX advised the prosecution that approval from the other government organizations was necessary, since many of the individual assessments themselves were classified.” On 14 July 2011, “ONCIX notified the prosecution that it would need authorization from the other government organizations to retrieve those organizations’ individual assessments.” Why was there no progress on this issue for 5 months?

On what date did you learn that you needed to go to the agencies directly, rather than go through ONCIX to retrieve the individual damage assessments?

How did you learn this? Please provide documentation.

You claim that on or about 1 November 2011, “the prosecution began to reach out to individuals on the ONCIX contact list in order to obtain copies of the damage assessments.”

Which specific agencies did you contact on or about 1 November 2011?

What did you ask them for?

Did they provide it?

When?

Who specifically contacted these agencies? Please provide names.

In an email from SGT Bradley on 27 February 2011 to one of the agencies, he states:

Although we have been coordinating with NCIX/ODNI for the past year, just two weeks ago they determined that we cannot review copies of your organization’s documents in their possession, and we must directly go to your organization to coordinate a review.

How could you have discovered “just two weeks ago” (i.e. early February 2011) that you had to go to the agencies directly, but have contacted the agencies directly on or about 1 November 2011?

As of the date of the first 802 session on 23 February 2012:

What agencies had you contacted?

What did you ask these agencies for?

What did they provide, and when?

When did you first contact the Department of Agriculture?

If *after* 23 February 2012, why did you tell the Court on 23 February 2012 that you already contacted the Department of Agriculture and they had no *Brady*?

When did you receive a damage assessment from the Department of Agriculture?

Does the damage assessment contain *Brady* material (i.e. tends to reduce punishment)?

You claim that in February 2012, you tasked a paralegal to track down the damage assessments. Please provide a list of each agency that the paralegal contacted from February 2012 onward and when.

If any agency is duplicative of an agency already contacted prior to February 2012, please provide an explanation as to why the paralegal needed to reach out to the agency a second time.

From the day the paralegal send out the first email to the date that he received the last damage assessment, how many days elapsed?

How many total manpower hours did it take the paralegal to contact these agencies and collect the documentation?

Why could you not have appointed a paralegal to complete this job one year earlier?

If you began reaching out to agencies in October/November 2011, why was there a three month lag between that time and the time it you tasked a paralegal to reach out to these agencies in late February 2012?

Did you have knowledge (actual or constructive) prior to 23 February 2012 that any of the individual damage assessments had concluded that little to no harm was done to the particular agency?

If yes, how did you come to have that knowledge? (e.g. did you review the damage assessment; did ONCIX tell you, etc.)

If yes, why did you tell the Court that you had found no *Brady* information?

Please provide a list of each agency on the ONCIX list that you contacted, when you contacted them, when they provided responsive documentation, when you asked for permission to disclose

that responsive documentation, and when you disclosed that responsive information to the Defense.

It appears from the Chronology that there is a several month time lag between the time you asked for the damage assessment of these agencies and the time you asked for permission to disclose the damage assessment to the Defense? Why did you not ask for permission to disclose the damage assessment to the Defense at the same time as you asked for the damage assessment?

HQDA Memo

When did you complete drafting the original HQDA memorandum?

Once you completed drafting the original HQDA memorandum, who did you give it to? When?

When was the original HQDA memorandum sent out to HQDA? Who sent it out?

Did you request in the original HQDA memorandum that HQDA search for *Brady* material?

Did you use either the term “*Brady*” or R.C.M. 701(a)(6)?

Why did you wait until this date to send out a request that HQDA search for *Brady* material?

According to your response, you had DOD involved in the HQDA memorandum. Why was this necessary?

Was there a prohibition against you contacting HQDA directly?

In July 2011, you had other emails with HQDA. Why did you not submit the memo to HQDA directly?

Did DOD act as a middleman in obtaining other discovery? (not including DOD discovery itself). If so, what other discovery did DOD act as a middleman for?

How did you keep track of what DOD was doing and what it “owed” you in terms of discovery?

What was the suspense date on the original HQDA memorandum?

When the suspense date came and went, did you follow up with HQDA? DOD? Any other entity?

On what date did DOD tell you that all responsive material had been compiled?

Did DOD provide an accounting of what information they were giving you? If so, in what form?

When did you finish reviewing all this “responsive material”?

On what date did you become aware that you did not receive any response from HDQA?

What did you do in reference to the missing HQDA documents at that point? When?

You claim that on 5 January 2012, you contacted DOD who “advised the prosecution to contact HQDA directly to speed up the process.” Is that true?

Did you contact HQDA directly at that point?

You claim on 10 January 2012 to have “emailed Criminal Law Division, Office of the Judge Advocate General, United States Army (hereinafter “OTJAG”) to request an update, and was informed that OTJAG needed to contact DOD OGC for the inquiry.” Why did you email Criminal Law Division after being told on 5 January 2012 to go to HQDA directly?

Why did you continue to involve OTJAG in the process for the next several months instead of working with HQDA directly?

When did the revised HQDA memorandum get sent out (i.e. the second time)?

Was this an identical copy of the first HQDA memorandum?

Did the original HQDA memorandum from 29 July 2011 include the following language?

DOD OGC is requesting that HQDA search for and preserve any documents with material pertaining to: any type of investigation; working groups; resources provided to aid in rectifying an alleged compromise of government information damage assessments of the alleged compromise; or the consideration of any remedial measures in response to the alleged activities of PFC Manning and WikiLeaks.

If yes, why does this language not appear in any other preservation request submitted, e.g., to the FBI, Department of State, ONCIX, etc.?

If no, why was this new language included in the second HQDA memorandum?

When did HQDA receive all responsive documentation to the second HQDA memorandum?

When did HQDA provide the responsive documentation to you?

When did you review the HQDA information? Please provide specific dates.

How many responsive documents did HQDA provide you with?

When did you request authority to disclose the HQDA documents to the Defense?

When did HQDA approve of that request?

When were all the HQDA documents produced to the Defense?

Please explain this entry in your Chronology: “30-Jun-11 Thu Prosecution reviews HQDA records responsive to prudential search request to DoD but not TS-SCI records responsive to the prudential search request.”

Other Closely Aligned Agencies and Prudential Search Requests

Please provide a list of every agency that you sent a “prudential search request” to and when. In this list, please provide the original suspense date for the agency to respond. Do not include the 63 agencies that were contacted for the ONCIX damage assessment.

From documentation already provided, it appears that these search requests were sent no earlier than May 2011, one year after the accused was placed in pretrial confinement. Why did you wait one year before sending out prudential search requests?

Could relevant information have been destroyed in this one year?

To your knowledge, was relevant information destroyed in this one year?

If not, then please explain the following: “Furthermore, please take steps to preserve materials related to PFC Manning and/or WikiLeaks from any routine data destruction practices.”

Do any of the agencies that you contacted have “routine data destruction practices”? If so, which ones?

Could the documents pertaining to the Department of State’s reporting to Congress have been destroyed pursuant to routine data destruction practices?

Were there any agencies/organizations that you contacted to provide discovery, but that you did not submit a prudential search request to? If yes, please list all agencies, the date you contacted them, how you contacted them, the date they produced information, the date you reviewed information, and the date you disclosed that information to the Defense.

Do you think that your prudential search requests are synonymous with a request for *Brady* material? In other words, are these the same as your *Brady* requests?

If not, please provide dates when you send a request for *Brady* to each agency. Also, please provide a copy of your *Brady* request.

If these prudential search requests are your request for *Brady*, did you mention the word “Brady” or R.C.M. 701(a)(6) in the prudential search requests?

If not, why not?

What part of the prudential search requests refers to *Brady*? Please identify specific language.

Please explain how this specific language asks for *Brady* material.

You ask in your search request that the agencies preserve and produce documents that “discuss damage or harm caused by PFC Manning.” Did you ever ask for documents which discuss a lack of harm or damage caused by PFC Manning?

In your preservation requests, you referred to PFC Manning’s Article 46 rights. Why did you not refer to *Brady*?

You state in your search request, “This request is designed to allow the prosecutors to assess the totality of information available and held as records by other government agencies.” You do not state that the request is designed to provide *Brady* discover to the Defense (in fact you state, “It is not intended to, nor should it be interpreted as, ascribing any legal relevance, including whether such information may be provided in discovery to the information requested.). Were these search requests designed to compile evidence for your case-in-chief?

In your search request you ask for “certain information, detailed below, which directly implicates the evidence in the above-referenced case.” What does this mean?

Did you ever specifically ask any agency for documents or evidence which reasonably tends to negate guilt, reduce guilt, or reduce punishment? If so, how did you ask these agencies? Please provide a list of agencies, and how and when the communication took place.

The first reference to *Brady* in your chronology is *after* you submitted your prudential search requests (“9-Jun-11 Thu PTA and Brady research/memo”). Why did you wait over one year to research *Brady*?

Why did you send out preservation requests without researching *Brady*?

After your May 2011 (or thereabouts) prudential search request, did you ever follow-up with the agencies to ask why you had not received any responsive documentation? Please provide a list of agencies, the dates you contacted them, and the substance of the communications. If in writing, please provide documentation.

Did any of the agencies meet the original suspense dates? If yes, please provide details and dates.

For those agencies that did not meet the original suspense dates, did you contact them? If yes, when? Please provide a list of each agency, when the communication took place, and what the substance of the communication entailed. If in writing, please provide documentation.

Why did you send out the exact same search request to DIA on 25 March 2012 and 14 June 2012?

How many other duplicative search requests did you send out? Please list each agency and the dates that the duplicative search requests were sent out.¹

Why did you keep sending the same requests to these agencies?

Other than these duplicative requests, did you ever contact the agencies to inquire as to the progress in collecting the requested information? If yes, please provide details. In particular, please provide the list of agencies you contacted, when you contacted them, what the discussion entailed. Please provide documentary evidence to this effect.

Did you ever ask any agency how they were collecting the responsive information? If yes, explain and provide documentation.

Did you ever ask any agency how many people they had asked to collect this information? If yes, explain and provide documentation.

Did you ever ask for updates on when you should expect the discovery? If yes, explain and provide documentation.

Did you ever communicate with any agency about PFC Manning's right to a speedy trial? If yes, explain and provide documentation.

Did any agency provide you with an explanation as to what was taking so long to collect the documents? If yes, explain.

Did you ever attempt to gather this information for disclosure prior to the Article 32 hearing?

Was any evidence from any prudential search request produced to the Defense prior to the Article 32 hearing?

When did each agency provide you with responsive documents? Please provide a list of agencies and dates where the agency had provided all responsive documents for your review.

How many responsive documents did each agency provide to you?

How many total manpower hours per agency did it take to collect the documents?

When did you review all the documents from each agency? Please provide a list of agencies and dates where you first reviewed all documents and dates where you finished reviewing all documents.

How many total hours did it take you to review documents from each agency? Please break it down by agency.

¹ By duplicative, the Defense means to say that the substance of the search request is identical but the date of the request and the suspense date may be different.

When did you disclose all the responsive documents to the Defense? Please break it down by agency (and use the date on which the last agency document was produced to the Defense).

Do you have any document to an external agency from prior to the Court's ruling on 23 March 2012 that explains the correct view of *Brady* and asks the agency for *Brady* discovery. If so, please provide that document.

After the Court's ruling on 23 March 2012 did you contact closely aligned agencies to specifically ask for evidence that reasonably tends to reduce punishment? If so, please provide documentation.

Department of Homeland Security

When did you first learn that the DHS was working on a damage assessment?

When did the DHS complete the damage assessment?

What is the date on the DHS damage assessment?

When were you authorized to view the DHS damage assessment?

When did you first view the DHS damage assessment?

How long did it take you to review the DHS damage assessment?

When was the first time you revealed the existence of the DHS damage assessment to the Defense? To the Court?

Why did you wait until that date to reveal the existence of the DHS damage assessment to the Defense and the Court?

After the Court's ruling on 11 May 2012 denying your request for reconsideration of the Department of State damage assessment, did you have contact with the DHS? If so, when? What was the substance of these communications?

In the aftermath of the Court's ruling on 11 May 2012, you reached out to various organizations:

14-May-12 Mon Email with Export-Import Bank of US to inquire about any discoverable material
14-May-12 Mon Email with FMC to inquire about any discoverable material
14-May-12 Mon Email with MMC to inquire about any discoverable material
14-May-12 Mon Email with OPI to inquire about any discoverable material
14-May-12 Mon Email with SSA to inquire about any discoverable material
14-May-12 Mon Email with SSS to inquire about any discoverable material
14-May-12 Mon Phone call with Export-Import Bank of US to inquire about any discoverable material
14-May-12 Mon Phone call with FCA to inquire about any discoverable material
14-May-12 Mon Phone call with FMC to inquire about any discoverable material
14-May-12 Mon Phone call with MMC to inquire about any discoverable material
14-May-12 Mon Phone call with OPI to inquire about any discoverable material

14-May-12 Mon Phone call with SBA to inquire about any discoverable material
17-May-12 Thu Email with ODNI to inquire about any discoverable material with NCPC
17-May-12 Thu Email with ODNI to inquire about any discoverable material with NCTC

Why did you wait until mid-May 2012 (two years after PFC Manning was arrested) to reach out to these organizations?

Was the need to reach out to these agencies tied to the Court's 11 May 2012 ruling? Explain.

Did you submit a prudential search request to DHS? If yes, when?

If you did not submit a prudential search request, did you otherwise ask DHS to produce responsive documentation?

Did you receive discoverable information from DHS? When?

When did you review that discoverable information?

How many total manpower hours did it take you to review that information?

When did you produce that information to the Defense?

IRTF Damage Assessment

When did you first learn of the existence of the IRTF damage assessment?

When was the IRTF damage assessment completed?

What is the date on the IRTF damage assessment? [If this information is classified, please provide an explanation and documentation to this effect].

When did you first request to view the IRTF damage assessment?

When did the CIA approve of your request to view the IRTF damage assessment?

When did you first receive the IRTF damage assessment?

When did you review the IRTF damage assessment?

How many total hours did it take you to review the IRTF damage assessment?

How many pages was the IRTF damage assessment?

When was the IRTF damage assessment produced to the Defense?

OGA1 Second Follow-On Damage Assessment

When were you first informed that the OGA#1 was working on a second follow-on report?

How did you learn of this? Please provide documentation.

When did the OGA#1 begin the second follow-on report?

When did the OGA#1 complete second follow-on report?

What is the date on the OGA#1 second follow-on report? [If this information is classified, please provide an explanation and documentation to this effect].

When did you request to view the OGA#1 second follow-on report?

When were you given approval to view the OGA#1 second follow-on report?

When did you view the OGA#1 second follow-on report?

How many pages was the OGA#1 second follow-on report?

How long in total did it take you to review the OGA#1 second follow-on report?

When did you disclose the existence of the OGA#1 second follow-on report to the Court and the Defense?

On 11 April 2012, you indicate the “Prosecution reviews two versions of OGA1 damage assessment.” Was one of the two damage assessments the OGA#1 “follow-on report”?

If not, why were there two damage assessments?

Have you disclosed both damage assessments to the Court and the Defense?

Grand Jury Testimony

You indicate that on 29 September 2010, “DOJ informed prosecution that judge signed order disclosing grand jury matters to prosecution.” Does that mean you were authorized to view the grand jury testimony on that date?

If not, why not?

If not, on what date were you authorized to view the grand jury testimony? Who authorized this?

When did you request to view the grand jury testimony?

When did you receive the grand jury testimony?

When did you review the grand jury testimony? Please provide the date that you started reviewing the testimony and the date you finished reviewing the grand jury testimony.

How many total manpower hours did it take to review the grand jury testimony?

When did you produce the grand jury testimony to the Defense?

Quantico Emails

When did you request that Quantico preserve all emails related to PFC Manning?

When did you begin receiving emails from Quantico?

When did you receive the last email from Quantico?

You indicate that on 2 June 2011 you “Picked up Quantico MCB Discovery docs” at Quantico. Were these emails in the “discovery docs” that you picked up?

When did you begin reviewing emails from Quantico?

Did any member of the prosecution team see, open, or look at any of the emails prior to two days before you informed the Defense of their existence?

Where were the emails between the time you received the last email from Quantico and the time you began reviewing the emails?

Why did you wait until 2 days before the Defense filing to review the emails from Quantico?

Did you know, based on communication with people at Quantico Brig or otherwise, that the emails contained unfavorable information for the Government?

Did you know prior to reviewing the emails that LtGen. Flynn was involved in confinement decisions at Quantico?

Is it your honest belief that the Defense did not want emails from Quantico pertaining to PFC Manning?

Do you believe that emails are “documents” within the meaning of R.C.M. 701(a)(2)?

After the Defense informed the Court and Government that it was planning on mailing out attachments *earlier* than its official filing, why did you not alert the Defense to the existence of the emails?

In the email accompanying the original batch of 84 emails, MAJ Fein stated that these emails were “obviously material to the preparation of the defense.” The Defense asked the question: “Are there emails you have which are material to the preparation of the defense, but not obviously material?” Two prosecutors responded something to the effect, “No – we have given you everything that is material to the preparation of the defense.” Several weeks later, you disclosed another 600 emails as being material to the preparation of the defense. Why did these

prosecutors tell the Defense that you had disclosed everything that was material to the preparation of the defense?

On 3 August 2012, after the Defense had filed its Article 13 motion, you have the following entry “Email with CID to obtain Article 13 evidence.” Why did you wait until over two years into the case to email CID about obtaining Article 13 evidence?

When did you receive this information?

Is this the evidence you disclosed to the Defense on 25 October 2012, months after the Defense had filed its Article 13 motion?

Miscellaneous Issues

For all agencies not specifically mentioned, please provide: a) date of prudential search request or any other type of discovery request; b) date agency provided responsive documentation; c) date you reviewed responsive documentation; and d) date you produced responsive documentation.

The Secretary of the Army AR 15-6 investigation was completed on 14 February 2011 and disclosed to the defense on 30 June 2011, 136 days later. Similarly, the United States Forces-Iraq (USF-I) AR 15-6 investigation was completed on 16 June 2010; the documents were not produced to the Defense until 12 May 2011, 262 days later. Finally, the United States Division-Center (USD-C) AR 380-5 investigation was completed on 16 June 2010, but not disclosed to the Defense until 9 February 2011, 238 days later. Why was there a time lag in disclosing these documents to the Defense?

There are dozens (if not hundreds) of references to ‘developed discovery tracking system’ in the spring and summer of 2011. How long did it take to develop a system to track discovery? Why was the system developed more than one year after the accused was placed in pretrial confinement?

If you were prepared to arraign the accused in February 2011, why were you not prepared to disclose relevant documents and/or claim a privilege at that time?

As of the date of arraignment, had you asked any agency whether it would claim a privilege over classified information? Please explain.

As of the date of the Article 32 hearing, had you provided any *Brady* discovery to the Defense? If yes, please identify with specificity.

On numerous occasions, you asked for an additional 45-60 days to determine whether you would ask for redactions and substitutions or determine whether the agency would claim a privilege. Why did these communications not take place in the 20 months prior to arraignment?

As of December 2011 (the date of the Article 32 hearing), which damage assessments had you: a) requested to review; and b) actually reviewed?

Why were no damage assessments produced to the Defense in advance of the Article 32 hearing?

On 12 May 2012, your Chronology has the following entry: "ATF OGC- Stated that the documents received via JWICS were not the damage assessments requested and elaborated on the prosecution's request to locate the correct documents; replied that they will double check their SIPR archives." How many organizations needed to check their archives in order to retrieve responsive information? Please specify which organizations.

How many organizations indicated that they may have deleted certain files pertaining to the search request? Please specify which organizations.

The Defense asked for documents from the President's Intelligence Advisory Board in October 2011. When did you first request to review files from the President's Intelligence Advisory Board? When did you actually review any responsive documents? When did you produce PIAB documents to the Defense?

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